



State of West Virginia

Jim Justice
Governor

H. Wood Thrasher, Cabinet Secretary
DEPARTMENT OF COMMERCE

October 6, 2017

www.wvcommerce.org
(304) 558-2234

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Filing of Comment by the West Virginia Broadband Enhancement Council
Public Notice for Modernizing the FCC Form 477 Data Program
WC Docket No. 11-10; Document Number 2017-17901**

Dear Chairman Pai:

Thank you for soliciting comments concerning the Modernization of the Federal Communications Commission Form 477 Data Program. Your efforts to improve this process are encouraging and have the potential to expand access to high-capability broadband services throughout the State of West Virginia. The West Virginia Broadband Enhancement Council (the "Council") is committed to pursuing broadband development on behalf of the State. The comments provided herein represent the Council's commitment to this important endeavor.

The residents of West Virginia rely on the Commission for accurate data. As such, the Council requests that the Commission consider revisions to the Form 477 Data Program to protect the trust placed in government agencies with respect to the validity and accuracy of data related to the provision of broadband service.

The Council appreciates your commitment to the continuous improvement of policies and procedures that profoundly affect residents and businesses within the State of West Virginia.

The Council works closely with the West Virginia Office of GIS Coordination (WVGIS). In a partnership with the Council, the WVGIS will provide responses to the technical considerations associated with this Public Notice under separate cover.

The Council maintains that the careful and strategic evaluation of all available data is critical to broadband development. Therefore, the Council respectfully requests the consideration of the Commission in its evaluation of the comments provided in this letter.

The State of West Virginia has a unique perspective on broadband deployment in underserved and unserved areas. Our experience has shown how crucial reliable and accurate data becomes when providing internet access to disparate geographic areas. In this regard, the Council seeks partnership with the Commission, state and local governments, broadband providers, businesses, residents, and other stakeholders.

On behalf of the Council, I appreciate this opportunity to comment, and for the Commission's continued support of initiatives designed to enhance broadband service, particularly in rural locations like those found throughout the State of West Virginia.

Following are the priority comments of the West Virginia Broadband Enhancement Council:

I. The West Virginia Broadband Enhancement Council Requests that the Commission Collect Address-Level Data to Ensure and Enhance Broadband Access. The Lack of Address-Level Data Inhibits and Restricts the Ability of the Council and Other State Agencies to Meet Their Own Responsibilities to Ensure and Enhance Broadband Access.

The Council requests that the Commission begin to collect to support the accurate assessment of existing service, and to facilitate the reasoned expansion of service based upon a thorough analysis of need. The lack of address-level data inhibits and restricts the ability of the Council and other State agencies to meet their own responsibilities to ensure and enhance broadband access.

The Council is aware that Congress has required the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to *all Americans*," 47 U.S.C. § 1302(a).

The Council requests that the Commission specifically consider the most "rural, insular, and high cost" consumers through a more rigorous and detailed approach to its Form 477 data.

The Council notes that the current method of data collection and assessment does not adequately measure rural, insular and high cost areas when data from these areas is aggregated within a census block that also includes urban, concentrated, and lower cost consumers in neighboring communities. In essence a yes or no answer derived through the status of a census block does not adequately represent the hopes, dreams and aspirations of the individuals who live, work and learn in a particular neighborhood.

The Commission can more adequately address the needs of neighborhoods throughout West Virginia by collecting Form 477 data on subscriptions and service availability at the address level, instead of at the census block level. All providers have address level data on their current and potential subscribers. Indeed, providers could not maintain their facilities and bill for their services without keeping address level records. Providers also use addresses both to respond to requests for service from potential subscribers and to send direct mail advertisements. Accordingly, providing address-level data to the Commission should not pose an undue burden for providers, and there should be no claim that it is not possible to comply with this requirement.

The Council also request the assistance of the Commission in its obligation of reasoned decision making. Practically speaking, continuing to rely on only census block data creates a host of avoidable issues that may only deny or delay access to affordable broadband in an increasingly digital society. The Council observes that census block data reporting has produced an inaccurate and increasingly misleading picture of current broadband deployment in the State of West Virginia.

The Council asserts that census block data masks the persistent lack of service and the growing divide between unserved and underserved areas of West Virginia. Moreover, there is little incentive for providers to ensure that they are accurately representing their service offerings when the data they report makes it almost impossible to verify or disprove.

Requiring address level data would reveal all unserved and underserved Americans and also provide data that the Commission, State agencies, and State attorneys general can more readily verify. While providers may have little interest in revealing the areas that remain unserved and underserved, the Council sees no basis for forgoing the benefits of requiring providers to report address-level data.

Finally, requiring providers to report address-level data will enhance the Commission's ability to direct federal funds for broadband. The Commission helps to direct billions of federal funding for broadband that are based on existing service levels, and obtaining address-level data will allow the Commission to accurately identify all the eligible projects.

As the number of completely unserved or underserved census blocks decreases, the Commission's approach leads to disproportionate assistance to those census blocks in comparison to millions of equally deserving residents who live in partially served census blocks, but continue to remain unserved or underserved.

The Commission has experience in detecting and preventing redlining practices, and the incentives for providers to engage in the practices underlays many of the Commission's policies and decisions as well as Congress's decision to impose the universal service mandate on the Commission.

Requiring the reporting of address-level data will allow the Commission, State agencies, and State attorneys general to detect suspicious patterns of deployment and service availability and to take appropriate remedial action. Reporting will also serve to deter redlining practices.

The Commission, State agencies, and State attorneys general must assess competition levels and take steps to ensure adequate competition so that broadband is not available in theory but in fact. Using census block data creates illusions of competition where none exists in areas with two or more providers that independently serve distinct areas that fall within the same census block. Government agencies, at the State and Federal levels, should work together to address this oversight.

II. The Commission Should Accept Actual “On-the-Ground” Service Data or Alternate Datasets from State Agencies That Are Based on Speed-Test Results Collected from the Public.

As the Commission recognizes in the mobile-broadband context, it can and should collect “on-the-ground” data to compare provider claims to “actual consumer experience.” FCC 17-103 at ¶ 14. The Council, and similar State agencies, are eager to provide the Commission address-level data on speed-test results obtained from the public. The Commission can and should receive this data and incorporate it with address-level data it receives from providers.

To collect this on-the-ground data, the Council’s Speed Test Portal uses an Ookla speed-test interface to gauge the speed a user experiences. The system allows the user to enter their address; locate their home or business on an interactive map, identify their carrier, and select the level of service to which they subscribe. The user then follows prompts with directions for conducting a speed test.

These results are then automatically populated to a dataset where comparisons can be drawn. As a result, the program allows users to provide on-the-ground, address-level service data directly to the Council.

Incorporating on-the-ground speed test results will discourage and assist in correcting inaccurate provider representations. Indeed, the Council and the West Virginia Attorney General have found that providers sometimes fail to deliver the service they claim.

For example, West Virginia recently settled a dispute with an incumbent provider over its failure to deliver the service level promised to its customers. The Council encourages the Commission to take these steps, which will ensure that its Form 477 data program detects circumstances in which customers do not receive the service level for which they pay.

The Council is aware that other federal agencies accept alternative forms of data. To ease the burden on the Commission, the Council and other State agencies can summarize and coalesce data in a format deemed acceptable by the Commission. For example, the Commission can request data identifying addresses for which a State agency has data indicating that service is underperforming provider claims and representations to the Commission, or, alternatively, average speed-test results over the reporting period for each address.

III. Mobile Data Should Receive the Same Treatment as Fixed-Technologies Data.

The Council encourages the Commission to ensure that data on mobile data and fixed-technologies data receive the same treatment under the Form 477 program. This request expressly includes the level of detail, as well as the timing and scope of publication and dissemination of the data.

As a part of the Commission's obligation to reach reasoned decisions, the Council requests that the Commission treat like cases in a uniform manner unless it has an adequate basis for disparate treatment.

Accordingly, the Commission should follow through on its proposal to publish data on mobile broadband speeds that it already gathers as part of Form 477. This would treat mobile providers the same as their non-mobile broadband-provider counterparts. Likewise, the Commission should provide mobile data when it provides fixed-technologies data, since the data are collected at the same time and are most useful when analyzed in tandem.

IV. Satellite Data Should Reflect As-Built Availability.

The Council encourages the Commission to ensure that its satellite data reflects real-world, as-built availability so that the Commission can identify Americans who are entirely unserved. Satellite providers can obtain this data by using line-of-sight propagation analysis that considers both satellite positioning and digital terrain elevation models. This would allow for identification of areas the providers can serve. Relying on satellite data alone means that the Commission cannot accurately determine the presence of service.

Accordingly, the Commission should either refrain from making either service-availability or competition judgements that rely solely on satellite data, or Commission should require providers to submit data that reflects real-world, as-built availability.

V. State Broadband Agencies, Councils and Authorities, and State Attorneys General Should Have Full Access to Data.

The Council strongly encourages the Commission to provide State broadband agencies, councils and authorities, and State attorneys general with full access to all the data collected in the Form 477 program. Full data sharing will leverage the Commission's data and further its objectives by enabling States to help increase the availability and affordability of broadband service. Moreover, it will remove any need for duplicative data collection and reduce the burden imposed on providers by enabling them to submit a single uniform data set to the Commission for all of the States in which they operate.

Specifically, unrestricted, full access to Form 477 data will allow States to enforce their unfair or deceptive-trade-practices laws against providers that misrepresent their services. Likewise, State attorneys general have significant authority to address competition issues, and this authority can complement—and often exceed—the Commission's powers.

Filing of Comment on Proposed Rule
By the West Virginia Broadband Enhancement Council
Modernizing the FCC Form 477 Data Program, Document Number 2017-17901
October 6, 2017

Moreover, enabling States to ensure adequate and affordable service for their own citizens will allow States to experiment with ways in which to best achieve regulatory goals. This is particularly true when considering States with a disproportionate share of unserved and underserved citizens. Such States can expeditiously identify and implement innovative and locally tailored solutions to address problems, and the Commission should provide full access to data to assist their efforts.

To truly provide leverage while reducing duplication, the Commission should refrain from imposing any restrictions on the State's use of data except for those intended to safeguard personally identifiable information. And although the Council appreciates that some providers might resist full data sharing, any such concerns are obviated by the States' ability to obtain the same data if the Commission does not provide it.

VI. The Commission Should Maintain Semi-Annual Reporting.

The Council strongly discourages the Commission from reducing the frequency of Form 477 data publication. Any eased burden on providers will be offset by the reduced benefits of semi-annual reporting. The Council recognizes that Form 477 data is among the Commission's most important data sets, which the Commission and others rely on every day to make important decisions affecting millions of Americans.

Reducing the timeliness and accuracy of that data by moving to annual reporting would make it less useful and accurate and would do no more than require providers to create individual reports somewhat less frequently. Thus, the costs of reducing the frequency of collection and publication of Form 477 data would significantly outweigh the benefits.

In conclusion and behalf of the West Virginia Broadband Enhancement Council, I appreciate your consideration of the comments provided in this letter. The Council values partnership with Commission in the determination of policies and procedures that will directly influence the future of our State. We fully realize the importance of these policies and appreciate the opportunity to provide input. Should you have any questions concerning the information provided in this letter, please do not hesitate to contact me.

Sincerely,



Robert Hinton, Chairman
West Virginia Broadband Enhancement Council

RH:kw

cc: West Virginia Broadband Enhancement Council